

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Roland Paul Daigle

DEFENDANTS

James Kennedy

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN REM AND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OR LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Daniel J. Winfree
1010 Second Ave. Ste. 1015
San Diego, CA 92101
619-235-6060

ATTORNEYS (IF KNOWN)

'08 CV 0256 LAB AJB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 USC 158

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

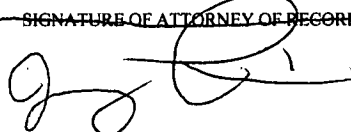
JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

CR



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

(619) 557-5620

FAX: (619) 557-5536

2008 FEB -8 PM 3:10

TRANSMITTAL MEMORANDUM

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY 

DEPUTY

To: UNITED STATES DISTRICT COURT
880 Front Street, Suite 4290
San Diego, California 92101

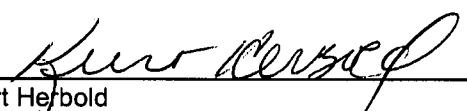
'08 CV 0256 LAB AJB

From: BARRY K. LANDER, Clerk District/Office No. 974-3

CASE NAME Roland Paul Daigle		BANKRUPTCY NO.	
		02-10222-M7	
		ADVERSARY NO.	
		06-90433	
		APPEAL NO.	
		1	
		BANKRUPTCY JUDGE	
		James W. Meyers	
		DATE BANKRUPTCY FILED	
		10/18/02	
DATE OF ENTRY OF APPEALED ORDER:	NOTICE OF APPEAL FILED ON:	FEE PAID:	NOTICE OF REFERRAL TO USDC MAILED ON:
1/16/08	1/25/08	YES	February 6, 2008

DATED: February 6, 2008

Barry K. Lander, Clerk

By:  Deputy Clerk
Kurt Herbold

CSD 1251 [05/10/00]

<p align="center">FILED</p> <p align="center">February 6, 2008</p> <p align="center">CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA BY _____ DEPUTY</p>
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<p align="center">UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA 325 West "F" Street, San Diego, California 92101-6991</p>	
<p>In Re Roland Paul Daigle Debtor.</p>	<p>BANKRUPTCY NO. 02-10222-M7</p>
<p>Roland Paul Daigle (Appellant)</p>	<p>06-90433</p>
<p>v. James Kennedy (Appellee)</p>	<p>BK APPEAL NO. 1 ASSIGNED TO JUDGE James W. Meyers</p>

**NOTICE OF REFERRAL OF APPEAL TO UNITED STATES DISTRICT COURT
COMBINED WITH SERVICE OF NOTICE OF APPEAL**

TO: Daniel J. Winfree, 1010 Second Ave., #1015, San Diego, CA 92101,
Debra A Riley, 501 W. Broadway 15th Flr, San Diego, CA 92101,
William P. Fennell, 1111 Sixth Avenue #404, San Diego, CA 92101,
United States Trustee, Dept. of Justice, 402 W. Broadway, Ste. 600, San Diego, CA 92101

NOTICE IS HEREBY GIVEN that a Notice of Appeal has been filed by Roland Paul Daigle with the Clerk of the Bankruptcy Court. By virtue of orders of the Judicial Council of the Ninth Circuit and the District Court for this district, the above appeal has been referred to the United States District Court for the Southern District of California.

For further information, you may contact the Clerk of the United States District Court at 880 Front Street, Suite 4290, San Diego, California 92101 or by calling (619) 557-5600.

I hereby certify that on this date copies of the Notice of Appeal and the within Notice of Referral were mailed to the above-named person(s).

DATED: February 6, 2008

Barry K. Lander, Clerk

By: Kurt Herbold, Deputy Clerk
Kurt Herbold

DANIEL J. WINFREE
Attorney at Law #98890
1010 Second Ave., Ste. 1015
San Diego, CA 92101
Phn: (619) 235-6060
Fax: (619) 234-8620

Attorney for Appellant, Roland Paul

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) Case No.: 02-10222-M7
ROLAND PAUL DAIGLE,) ADV No: 06-90433-JM
Debtor.) NOTICE OF APPEAL
)
)

ROLAND PAUL DAIGLE and AUDREY DAIGLE, appeal under 28 U.S.C. §158(a) or (b) from judgment, order, or decree of the bankruptcy court of the Southern District of California entered on the 1-16-08.

The parties to the order appealed from and names of their respective attorneys are as follows:

James Kennedy, Trustee	Roland and Audrey Daigle	Robert and Nadia Caruso
c/o William P. Fennell	c/o DANIEL J. WINFREE	c/o Debra A. Riley
1111 Sixth Avenue # 404	1010 Second Ave., #1015	501 W. Broadway 15 th Flr
San Diego, Ca 92101	San Diego, CA 92101	San Diego, CA 92101

Dated: January 25, 2008

Signed: /s/Daniel J. Winfree
DANIEL J. WINFREE,
Attorney for Appellant

Address: 1010 2nd. Ave., Ste. 1015
San Diego, CA 92101

c:\Bank\Appellate.Not

DANIEL J. WINFREE
Attorney at Law #98890
1010 Second Ave., Ste. 1015
San Diego, CA 92101
Phn: (619) 235-6060
Fax: (619) 234-8620

Attorneys for Debtor(s) and Appellants

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) Case No.: 02-10222-M7
ROLAND PAUL DAIGLE) **ADV NO. 06-90433-JM**
Debtor(s).) PROOF OF SERVICE

I, the undersigned hereby declare and state I am employed in the County of San Diego. I am over the age of eighteen years and am not a party to the above-entitled case. On January 25, 2008 I served Defendants Roland Paul Daigle and Audrey Daigles Notice of Appeal and Election for District Court, via first class, United States mail, postage prepaid, addressed as follows:

William P. Fennell
600 W. Broadway, Suite 930
San Diego, CA, CA 92101

Debra A Riley
501 West Broadway, 15th Floor
San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true.

Date: 1-25-2008

/s/ Daniel J. Winfree

DANIEL J. WINFREE

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Deferred, Appeal

**U.S. Bankruptcy Court
Southern District of California (San Diego)
Adversary Proceeding #: 06-90433-JM
Internal Use Only**

Assigned to: Judge James W. Meyers

Date Filed: 10/27/06

Related BK Case: 02-10222

Related BK Title: Roland Paul Daigle

Related BK Chapter: 7

Demand:

Nature[s] 11 Recovery of money/property

of Suit: - 542 turnover of property

91 Declaratory judgment

Plaintiffs

James L. Kennedy represented **Tracy L. Schimelfenig**

PO Box 28459

San Diego, CA

92198-0459

(858) 451-8859

by Law Office of William P. Fennell, APLC

1111 Sixth Avenue, #404

San Diego, CA 92101

(619) 325-1560

Fax : 619-325-1558

Email: Tracy.Schim@fennelllaw.com

William P. Fennell

Law Office of William P. Fennell, APLC

1111 Sixth Avenue #404

San Diego, CA 92101

(619) 325-1560

Fax : (619) 325-1558

Email: william.fennell@fennelllaw.com

LEAD ATTORNEY

V.

Defendant

Roland Paul Daigle represented by **Daniel J. Winfree**
 450 Benevente Drive
 Oceanside, CA 92057
 SSN: 049-32-3341
 1010 Second Avenue, Suite 1015
 San Diego, CA 92101
 (619) 235-6060
 Email: lawyer@bkatty.com

Audrey A. Daigle represented by **Daniel J. Winfree**
 450 Benevente Dr.
 San Diego, CA 92057
 (See above for address)

Audrey A. Daigle, Trustee of Real Estate Trust represented by **Daniel J. Winfree**
 (See above for address)

Robert M. Caruso represented **Debra A. Riley**
 by Allen,Matkins,Leck,Gamble,Mallory&Natsis

501 West Broadway
 15th Floor
 San Diego, Ca 92101-3577
 (619)233-1155
 Fax : (619)233-1158
 Email: driley@allenmatkins.com

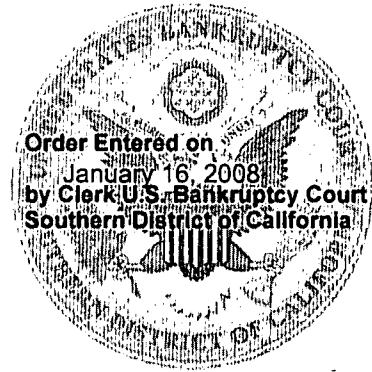
Naydia E. Caruso represented **Debra A. Riley**
 by (See above for address)

Filing Date	#	Docket Text
01/16/2008	<u>48</u>	Order Approving Judgment on Trustee's Motion for Summary Judgment (Related Doc # <u>36</u>) signed on 1/16/2008. (Crosby, A.C.) (Entered: 01/16/2008)

01/16/2008	● <u>49</u>	Notice of Entry of Judgment or Order (related documents <u>48</u> Order re: Motion for Summary Judgment) (Crosby, A.C.) (Entered: 01/16/2008)
01/25/2008	● <u>50</u>	Notice of Appeal. Fee Amount \$ 255 (related documents <u>48</u> Order re: Motion for Summary Judgment) filed by Daniel J. Winfree on behalf of Audrey A. Daigle, Roland Paul Daigle. Appeal Designation Due By: 2/4/2008. Statement of Issues Due By: 2/4/2008. Appellee Designation Due By: 2/14/2008. Record Transmission due by 3/10/2008, (Winfree, Daniel) (Entered: 01/25/2008)
01/25/2008	● <u>51</u>	Election for Appeal to be Heard by District Court.. (related documents <u>50</u> Notice of Appeal,) filed by Daniel J. Winfree on behalf of Audrey A. Daigle, Roland Paul Daigle. (Winfree, Daniel) (Entered: 01/25/2008)
01/25/2008	52	Receipt of Notice of Appeal(06-90433-JM) [appeal,97] (255.00) Filing Fee. Receipt number 3120388. Fee Amount 255.00 (U.S. Treasury) (Entered: 01/25/2008)
02/04/2008	● <u>53</u>	Designation of Record and Statement of Issues on Appeal. BK Appeal No: 02-10222 (related documents <u>50</u> Notice of Appeal,) filed by Daniel J. Winfree on behalf of Audrey A. Daigle, Roland Paul Daigle. (Winfree, Daniel) (Entered: 02/04/2008)
02/06/2008	● <u>54</u>	Notice of Referral of Appeal to the Bankruptcy Appellate Panel with service of Notice of Appeal. BK Appeal No: 1 (Attachments: # <u>1</u> Transmittal Memorandum) (related documents <u>50</u> Notice of Appeal,) (Herbold, K.) (Entered: 02/06/2008)

CSD 3000A [11/15/04]

Name, Address, Telephone No. & I.D. No.
 William P. Fennell, Esq. (#164210)
 Tracy L. Schimelfenig, Esq. (#243714)
 Law Office of William P. Fennell, APLC
 1111 Sixth Avenue, Suite 404
 San Diego, CA 92101
 Telephone: (619) 325-1560
 Facsimile: (619) 325-1558
 Attorneys for James L. Kennedy, Chapter 7 Trustee



UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

ROLAND PAUL DAIGLE (SSN-3341)

Debtor.

BANKRUPTCY NO. 02-10222-M7

JAMES L. KENNEDY, CHAPTER 7 TRUSTEE

Plaintiff(s)

ADVERSARY NO. 06-90433-JM

v. ROLAND PAUL DAIGLE, an individual; AUDREY A. DAIGLE,
 an individual and as Trustee of REAL ESTATE TRUST;
 ROBERT M. CARUSO, an individual; and NAYDIA E.
 CARUSO, an individual;

Defendants(s)

Date of Hearing: December 19, 2007

Time of Hearing: 2:00 p.m.

Name of Judge: James W. Meyers

ORDER AND JUDGMENT ON TRUSTEE'S MOTION FOR SUMMARY JUDGMENT

IT IS ORDERED THAT the relief sought as set forth on the continuation pages attached and numbered two (2) through two (2) with exhibits, if any, for a total of 2 pages, is granted. Notice of Lodgment Docket Entry No. 46

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DATED: January 16, 2008

Signature by the attorney constitutes a certification under
 Fed. R. of Bankr. P. 9011 that the relief in the order is the
 relief granted by the court.

Submitted by:

LAW OFFICE OF WILLIAM P. FENNELL, APLC

By: /s/William P. Fennell

Attorneys for James L. Kennedy, Chapter 7 Trustee


 Judge, United States Bankruptcy Court

CSD 3000A

CSD 3000A [11/15/04](Page 2)

ORDER AND JUDGMENT ON TRUSTEE'S MOTION FOR SUMMARY JUDGMENT
DEBTOR: ROLAND PAUL DAIGLECASE NO.: 02-10222-M7
ADV. NO.: 06-90433-JM

The Motion for Summary Judgment filed by James L. Kennedy Chapter 7 Trustee and Plaintiff ("Trustee") in the above-captioned hearing came on for regular hearing on December 19, 2007 at 2:00 p.m. before the Honorable James W. Meyers, Bankruptcy Judge presiding, appearance were made by Daniel Winfree, Esq. on behalf of Defendants, Roland Paul Daigle, an individual; Audrey A. Daigle, an individual and as Trustee of Real Estate Trust (collectively the "Daigles"), Debra Riley, Esq. of Allen Matkins, et al. on behalf of Robert M. Caruso, and Naydia E. Caruso (collectively the "Carusos"), and William P. Fennell, Esq. of the Law Office of William P. Fennell, APLC on behalf of the Trustee, there were no other appearances. The court having considered the Trustee's motion and the written and oral opposition thereto and good cause appearing thereon,

IT IS HEREBY ORDERED THAT:

- 1) The Trustee's Motion for Summary Judgment is granted against the Daigles and in favor of Trustee;
- 2) The Quitclaim Deed, Instrument No. 2002007100, recorded October 22, 2002 with the Norwich Town Clerk is void and of no force or affect, pursuant to 11 U.S.C. § 549;
- 3) The Daigles' 50% interest in the real property located at 531-545 Boswell Avenue, Norwich, New London County, Connecticut, more fully described in the legal description attached hereto and incorporated herein as Exhibit "A" and all improvements thereon, including but not limited to the 8 unit apartment/condominium complex, (collectively herein the "Real Property") shall hereinafter be vested with the Trustee as is property of the above captioned bankruptcy estate; and
- 4) Trustee's Motion for Summary Judgment is denied as against the Carusos.

Units 1 through 8 inclusive together with their appurtenant interest in the common elements of The Reynolds, A Condominium, situated in the Town of Norwich, County of New London, and State of Connecticut, which Units and their appurtenant interest in the common elements are more particularly described in a certain Declaration of Condominium by J & S Realty, dated February 11, 1981, and recorded in the Norwich Land Records, at Volume 550, Page 158.

The property on which said Units are located is more particularly bounded and described in a map or plan entitled, "The REYNOLDS, A Condominium Boswell Avenue Norwich, Conn ARCHITECT A. MASTRONUNZIO GLASCOW CONN DATE 2-28-75" filed with said Declaration of Condominium, which map or plan is on file with the Town Clerk of the Town of Norwich, to which reference may be had.

Being the same premises as described at Volume 429, Page 243 of the Norwich Land Records, as follows:

A certain tract or parcel of land, situated in the said Town of Norwich, known and numbered as 535 Boswell Avenue, bounded and described as follows:

NORTHERLY: By 14th Street;
SOUTHERLY: By 13th Street;
EASTERLY : By land now or formerly of Patrick J.
Sullivan and Pauline Robillard; and
WESTERLY : By Boswell Avenue.

Subject to taxes to the Town of Norwich now due or to become due which the Grantees herein assume and agree to pay.